

No. 88-1125

In the Supreme Court of the United States

OCTOBER TERM, 1989

JANE HODGESON, ET A.L.,

APPELLANTS

V.

MINNESOTA, ET A.L.

APPELLEES

*PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

**BRIEF FOR JEFF WHITE, OPERATION RESCUE AND RANDY ADLER
AS AMICUS CURIAE SUPPORTING APPELLEES**

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MOTION FOR LEAVE TO FILE A BRIEF AS
AMICI CURIAE ON BEHALF OF RESPONDENT

Amici hereby respectfully move for
leave to file a brief amicus curiae in
the present case. Requested consent of
parties is expected but has not yet
been received and filed. When filed, it
will make this motion unnecessary.

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INTEREST OF AMICI CURIAE

The interest of the amici, in brief, is that as long as the US Supreme Court (as very broadly interpreted by District Courts) considers abortion a fundamental right and a Civil Right according to District Courts requiring protection under 42 USC Sec 1983-1985, amici and those similar to them will continue to run the risk of being pauperized by Federal judges and have their bones broken by abortion mill guardians.

Operation Rescue is a name given to a movement under whose banner many tens of thousands of Americans have been arrested for trespass at abortion clinics during the past year. Rev Dr Randy Adler is a husband and father, the pastor of a Protestant church and the head of the pastor's committee for Operation Rescue of Southern California.

Never wealthy in material goods before August 30, on August 30, 1989, in a case where there were no damages to plaintiffs, he lost his last asset to the ACLU attorneys for attorney fees pursuant to a judgement re contempt in United States District Court (Central District of California) case CV 89-1181 AWT, the honorable A Wallace Tashima, judge presiding. Among the allegations of the contempt was the charge that Adler participated in a rescue March 25 in Los Angeles (where about 500 rescuers were injured). Adler and hundreds of others filed a counter claim alleging Civil Rights violations, which counter claim has been dismissed as not stating a cause of action since Roe v Wade makes any recovery impossible, even assuming the truth of the matters stated.. Jeff White was acquitted of criminal charges

by a jury and ordered to pay the ACLU a fine by judge Tashima who found him in contempt presumably for what the jury acquitted him of. The number of amici listed herein is limited so the description of their interests will not unduly burden the court. There were many other arms broken by LAPD and numerous other injuries such as broken feet, soft tissue damage, nerve damage, other breaks, etc. inflicted by LAPD and their horses and by pro abortion counter demonstrators who beat certain non resisting rescuers without police interference.

Our interest is that we wish this great Court would go back to stopping legislating so we could go back to being ordinary citizens.

SUMMARY OF ARGUMENT

Hey! You people up there in the Ivory Tower. Please abort Roe v Wade. In spite of your talents, you cannot fine tune it to make it a workable law and you cannot do as good a job as a real legislature.

If you do not abort Roe v Wade, we, intimately associated with America's most active ACLU attorney welfare system, will continue to have our arms broken by the finest police from Los Angeles and other cities, and will soon owe the ACLU more hundreds of thousands of dollars awarded in Federal cases relating to the FUNDAMENTAL Civil Right to abort pursuant to 42 USC Sec 1983-1985 by Federal judges in cases with no other damages.

Our nefarious crime, of course, is to protest at abortion clinics and on

occasion to be arrested, although acquitted in criminal court, perhaps because Article 1, Section 1 of the California Constitution begins: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life..." Note that life is broadly protected and need not be born as is also true in the definition of personhood in Title 1, USC Sec 1, not the more restrictive 1973 US Supreme Court definition that only those humans lives are entitled to protection which the US Supreme Court wishes.

The pro abortionists can prolong the bitter battle, but cannot win. Those favoring abortion favor it a little like any other issue. Most opposing see it as killing millions of innocent tiny babies via horrible torture deaths. Accordingly,

there is a vast difference in the commitment of those on the opposing sides. This is why, other things being equal, the candidate promising to appoint anti abortion Justices wins in a landslide. The main thrust for abortion has come from those in the media who usually favor abortion and slant the media accordingly, those in control of elite groups such as the AMA, and the former majority of this Court. This would have been enough to carry the day with most issues. The abortion issue differs, however in that there are millions who would sacrifice their lives to stop what they believe is the bloodshed. The demographics favor the anti abortionists. Twenty years ago, the young were more pro abortion. This has changed because 1,500,000 potentially pro abortion voters die annually before birth.

SUMMARY OF BRUTALITY BY HEAD OF US CIVIL RIGHTS COMMISSION (from Wall Street Journal, 8/18/89)

"POLICE BRUTALITY - BUT NO OUTRAGE
by William B. Allen

Selma, Ala, 1965: blacks trying to register to vote are stopped at the courthouse steps by police using billy clubs and cattle prods to beat the nonviolent demonstrators into submission and retreat. The brutality of the confrontation reaches its climax with the first attempt to march from Selma to Montgomery, a march that is aborted when the state troopers charge the marchers, swinging billy clubs and firing canisters of tear gas into the fleeing crowd. Soon mounted police armed with bull whips, ropes, and barbed wire wrapped in rubber join in the unprovoked

attack. Hosea Williams is among the first knocked down by excessive police force.

Martin Luther King, Jr., begins sending telegrams from his office in Atlanta before the day is through. He calls the event a "vicious maltreatment of defenseless citizens of Selma, where old women and young children were gassed and clubbed at random."

Horrrifying Images

The news media quickly convey the images to a horrified American people. The Department of Justice is pressed to investigate, and to send federal marshals to Alabama to protect the marchers. Within two weeks, President Lyndon B. Johnson introduces legislation later known as the Voting Rights Act.

Within a month, a full-scale march to Montgomery, under the protection of federal officers and a nationalized Alabama national guard, is conducted peacefully, and the tactic of peaceful demonstration is firmly secured in the American conscience.

Washington, D.C., 1984: Scores of people - including several high-ranking government officials - protesting the apartheid policies of the South African government block the doors of the South African Embassy. The protesters are gingerly arrested, released on their own recognizance. The national media cover the protests extensively, and for more than two years similar demonstrations occur throughout the country, with hardly a single act of excessive force on the part of the police.

Pittsburgh, Pa., 1989: 121 members of the group Operation Rescue are arrested while peacefully protesting outside an abortion clinic. The group is trained in the same type of passive resistance techniques employed by the civil rights protests a generation ago. Police, who had removed their badges and name plates, respond with "pain compliance" techniques - twisting the protesters' ears, bending the hands backwards to the wrist, and carrying the protesters off by inserting billy clubs between their handcuffed hands and the small of the back are employed to force the protesters into submission.

Women - from college age to grandmothers - are dragged by the bottoms of their blouses, their breasts exposed to hooting male prisoners. One affidavit reads: "He grabbed me between my breasts

and dragged me up the stairs by my wire-rimmed bra. My breasts were fully exposed as I was being dragged up the stairs." Complaints are filed with an assistant district attorney, who does not process them, allegedly on orders from her superiors. Several of the protesters report that other attempts to file complaints with city, county, and federal officials are similarly unsuccessful.

West Hartford, Conn., 1989:
Nonviolent Operation Rescue protesters and several reporters are arrested outside an abortion clinic. The film and notes of reporters are confiscated by police. "Pain compliance" techniques are once again used, and again by police who do not wear identifying name plates or badges.

Los Angeles, 1989; This time, the police use "nunchakus," as well as "pain compliance" techniques, upon the nonviolent Operation Rescue protesters. The nunchakus, a weapon consisting of two night sticks connected by a chain, is wrapped around the protester's wrist and arms. The great pain that follows when pressure is applied forces the protester to walk. One man's arm is grotesquely snapped in two by a police hold.

These are but a few, and not the most ghastly, of the stories from the nearly 50 cities throughout the country where allegations of police brutality have been made by members of Operation Rescue. Hosea Williams, one of the civil rights leaders who witnessed firsthand

the brutalities in Selma, participated in a news conference in Pittsburgh to decry the brutality of the police there. To date, no national news organization has deemed the allegations worthy of coverage.

The U.S. Department of Justice found that the Pittsburgh allegations I transmitted to them "lack the indicia of prosecutive merit necessary to warrant further investigation," though it did agree to investigate some of the charges and did acknowledge that the use of excessive force by police would violate federal civil rights laws. The head of the section in charge of the investigations stated that the group was violating a court injunction, as if such a violation made perfectly reasonable the kind of treatment to which the antiabortion protesters have been

subject.

In July, I placed on the agenda of the U.S. Commission on Civil Rights a resolution to recommend to the President that he direct the Department of Justice to undertake an investigation of these allegations at the earliest possible moment. My resolution did not condone the illegality of Operation Rescue's actions. Nor did I associate myself with their cause. Rather, I sought to affirm the continued support of the government and the people of the U.S. for the rights of all protesters. After lengthy and sometimes hostile scrutiny, my resolution was dropped from the agenda.

My colleagues argued that the resolution was a "back door" way to discuss abortion, as if the subject matter of the protest determined the legitimate police response. Cong. Don

Edwards (D., Calif.) chairman of the Commission's oversight committee in the House of Representatives, joined in - not coincidentally during the middle of the debate over reauthorization of the Commission - with a direct threat: "Consideration of this issue," which "appears to violate the Commission's authorizing statute" prohibiting "the Commission from studying issues relating to abortion," would "seriously erode congressional confidence in the Commission."

Courageous Congressmen

Meanwhile, the courageous few congressmen - Bob Walker (R., Pa.) Clyde Holloway (R., La.), Chris Smith (R., Calif.) and Bob Traxler (D., Mich.) - who have spoken out have gone largely

unnoticed by the press.

In the aftermath of the Supreme Court's Webster decision - which substantially returns the abortion debate to the states - we can expect more anti-abortion demonstrations. We ought to guarantee that we will not also see more police violence in the handling of them. It is imperative that we as a nation assert our commitment to equal treatment before the law. Nonviolent protesters should all be accorded the same treatment no matter what the subject of protest. To do less is to destroy the most prized achievement of the civil rights of everyone. And we will have destroyed that achievement, not just for Operation Rescue, but for all."

(William B. Allen is chairman of the U.S. Commission on Civil Rights.)

JURY VERDICT STORY (IN PART) (from Orange County Register, 9/14/89)

"Los Angeles-The founder and four members of the militant anti-abortion group Operation Rescue were acquitted Wednesday on misdemeanor charges...

Jurors deliberated four days before delivering their decision. White was the only defendant in the courtroom when the verdicts were announced. The defendants were charged with trespassing, resisting arrest and conspiracy, all misdemeanors."

FEDERAL COURT DIFFERENT RESULT

You might now be thinking: "Okay you trespassed and got lucky and the jury let you off. Why are you complaining to us?"

We request that you apply 1 USC 1 to the abortion situation as you have applied it to every other Act of

Congress where personhood is at issue, even if you do not agree with the results that may follow in order to reinstate the notion that America is a nation governed by laws, not nine philosopher kings called justices who do what they want, then call it Substantive Due Process. As a reason for so holding, we cite our federal case results to show you the impossibility of the US Supreme Court acting as a legislature without far ranging results going far beyond what the justices intend. (Those of you on the Court in 1973 may recall the chief justice assuring all that whatever the opinion meant, it did not mean abortion on demand.

Those of you who are scholars may agree that perhaps the best explanation of the history of the development of the Common Law is that it was the result of

the constant effort of the king and/or Parliament to impose their wishes on Britain by passing written laws which wishes were frustrated down through the centuries by clever lawyers who noticed interpretations in the written laws that had not been foreseen by those who wrote and passed them. Did you foresee the following in 1973?

The Federal preliminary injunction, filed 3/15/89, and used as an example to show you how far some District judges will go to protect the abortion right invented in 1973, ordered in applicable part as follows. (Central District of California, #CV 89-1181 AWT):
"Pending trial on the merits,

defendants Operation Rescue, Jeff White, Joseph Foreman, and Dr Randy Adler (then listed possible others not by name) hereby are enjoined and restrained from:

(a) Interfering with the rights of

plaintiffs, and persons similarly situated as plaintiffs, to travel, to obtain abortions and other medical services, and to privacy, by coercion, intimidation or force;

(b) Trespassing on, sitting in, blocking, impeding or obstructing ingress or egress from any facility at which abortions, family planning or gynecological services are provided in the State of California, including conducting "sidewalk counseling" of plaintiffs and others similarly situated, in a manner which physically impedes plaintiffs' movements, and demonstrating within fifteen (15) feet of any entrance or exit to any such facility during any actions maintained by "Operation Rescue" or a similarly structured action;

(c) Physically abusing persons

entering or leaving, working at or using any services at any facility at which abortions are performed in the State of California through the conclusion of blockade activities; and

(d) Attempting or directing others to take any of the actions described in subparagraphs (a), (b) and (c) of this paragraph 1."

Paragraph 2 ordered defendants to inform rescuers of the injunction.

"3. Nothing in this preliminary injunction shall be construed to limit defendants' exercise of their First Amendment rights."

Named defendants and others were tried before Judge Tashima for civil contempt. Plaintiffs were the class of abortion providers and the class of women in California. The classes have not been certified, but contempt has

protected non named members of the classes. Absolutely no damages were granted plaintiffs. Typical of the damages sought but not granted was about \$3000.00 sought by one plaintiff clinic at which demonstrators never appeared for equipment which the clinic bought and kept. The purpose of the equipment was to permit the clinic to better respond if (as did not happen at that clinic) a rescue took place. Think of the potential damages if every abortionist in California could buy equipment, then order us to pay for it, even if no rescuer ever saw the clinic.

All named defendants plus eight other people not named were found in contempt and ordered by order of August 29, 1989 to pay zero damages. We were, in spite of the total absence of damages to plaintiffs ordered to pay \$111,000.00

in attorney fees for the contempt action only, to the ACLU. Presumably there might later be additional orders for additional attorney fees. None of the plaintiffs had paid the ACLU anything, nor was there any obligation for any plaintiff to pay anything nor was there any expectation that any plaintiff would pay anything to the ACLU which filed this invalid lawsuit as a labor of love and perhaps in hope of receiving attorney fees from defendant. The ACLU took the case for free in hopes that a judge might order defendants to pay. If we are again found in contempt, a fine of \$10,000.00 on each of us will be added to this ordered payment.

Only the evidence on which Pastor Randy Adler was found in contempt will be included to show how little is sufficient. It comprises the next 17

lines.

" Exhibit 65 is a true and correct copy of Dr Adler meeting with Long Beach Police Department officials concerning the continued blockade of the clinic." (No arrests were made at that clinic, nor does the photo show more than Adler talking with a police officer.).

"I observed Randy Adler communicating with other people whom I believed to be involved in leading the blockade."

"Randy Adler also spoke at the rallies the first two nights. At that time he asked for contributions and pledges and encouraged people to blockade."

"During the time I was present at the clinic, I observed ...Randy Adler."

Appropriate objections as to conclusion, etc were made, but the

conclusionary statements were permitted in in spite of the fact that if Adler said any thing amounting to evidence of a contempt, plaintiffs would have had it on tape, and if Adler ever went within 15 feet of a door, it would have been on video tape and probably in photos. Plaintiffs had no such documents incriminating Adler.

Plaintiffs sound recorded every statement. They had several video tape recorders recording all relevant scenes from several angles. They took thousands of photographs. A motion to produce all said records relating to Adler resulted in no relevant evidence being produced.

There are a number of curious things about this fundamental abortion civil right. It is also a criminal offense, a felony, in Washington DC pursuant to statute found constitutional by this

court in 1971 as against a right to privacy argument by defendant Vuitch. It is also a criminal offence, a felony, in California pursuant to statute found constitutional by both this Court and the California Supreme Court to the extent it forbids abortion after viability. The clinics at which rescues were done for which contempt was found, have done and continue to do abortions after viability.

On 9/14/89, Judge Tashima agreed with us that his injunction should not have been issued in the first place by dismissing the ACLU law suit. This is nice, but he specifically refused to undo his order that we must pay the ACLU \$111,000.00 in attorney fees for filing a losing law suit and obtaining an order that should never have been granted, which order we allegedly disobeyed, in

part perhaps because Federal law at the time of our alleged disobedience excused civil contempts when the respondents later won the law suit. It should be noted that the ACLU attorneys demanded and were paid at the rate of two hundred dollars per hour, even though none of them was able to show that they had ever earned even half of that, and their salaries from the ACLU were presumable far less. (We were unable to force them to state their salaries with the ACLU to limit the payment to what the ACLU might be out of pocket.

The problems of amici previously outlined herein are bad enough. Other District courts have gone farther. Rescuers have been charged with RICO violations and ordered to pay because of alleged RICO violations in numerous cases. In New York, case 88-7873, second

circuit, New York NOW et al v Terry et al, Terry's attorney was ordered to pay and did pay substantial attorney fees to plaintiffs' attorney. The hunting is so lucrative that the ACLU has published a How to Sue Operation Rescue book.

The authorities have since partially awakened. The Senate has passed a rider by Sen Armstrong which will financially punish cities that fail "to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies...against any individuals engaged in nonviolent civil rights demonstrations." The Civil Rights Commission did investigate and recommended the Justice Department take action.

We do not really care. The blood of martyrs is the seedbed of new Christians and we are privileged to try to rescue.

THE NATURE OF THE ABORTION BATTLE

This Court is obviously groping for a way out of its abortion mess. We attempt to assist by explaining the battle in a unique way from a different perspective. If you disagree, you will at least have been told why we do as we do.

There is a tremendous difference in the commitment of the opposing sides. The leaders are perhaps committed, but most of the battle is fought by followers. The followers differ substantially in commitment. Part of the reason one becomes or remains pro abortion is one's relative lack of commitment to God, spouse, children, etc. Part of the reason one becomes or remains anti abortion is one's ability and desire to commit to one's God, one's religion, one's spouse for life, to the good of one's beloved nation, to the concept of having and

caring for one's children for any one of whom one would if necessary sacrifice one's life. The June 26th, 1989 Cincinnati Enquirer carried a story illustrating this difference which is so major it guarantees eventual victory for the anti abortion side. Jane Roe tried to get an abortion, and took her case all the way to the US Supreme Court which decided her way, but too late. She had already delivered and placed the baby girl for adoption. That girl, now 19, has apparently been located by an adoption search consultant. She's a college student living in Seattle with her adoptive parents, and is strongly pro-life. The news was broken to her in a hotel restaurant as she sat with her adoptive mother, her boy friend and her best friend. She was mortified when she learned the identity of her biological

mother. At first, though, she didn't know who Jane Roe was. The Roe v Wade case was explained to her, and she was then handed a People Magazine story about her biological mother. She looked at it and it sunk in. She threw it down and ran out of the room. "It was horrible," said the adoption search consultant. "Imagine your mother not wanting you so much that she went to the Supreme Court to get rid of you." Her biological mother, Jane Roe, (Norma McCorvey) told one reporter that she was glad she had not had the abortion and was happy to know her daughter was alive and well. Later reports, however, quoted her as saying that she was still strongly "pro Choice", and she seemed to indicate that if she had the same choice to make, she would do it all over again.

The most significant point of the article is that an adoption search

consultant located the daughter. Only a parent (McCorvey) is likely to have made the request.

Doe of Doe v Bolton is now anti abortion. McCorvey is wavering and showing dangerous signs of sentimentality. She is glad the law prevented her from having that abortion in spite of all the attention she has received from pro abortionists since.

Pro abortionists must have counted on a vast wave of women who had abortions becoming pro abortion advocates. Instead, these women are very quiet. Many have regrets and are pro life. This is some evidence for the widespread existence of an anti abortion conscience and perhaps even, dare we surmise, perhaps an anti abortion God activating it. Perhaps they know they removed something more than a piece of their own body, more than mere

tissue. Many of them act like it.

A recent poll by President Reagan's pollster, the Wirthlin agency highlights why the pro abortionists must lose in spite of recently published polls indicating still strong support for abortion. The Wirthlin poll indicated a 15% anti abortion swing in way they would vote among young voters born since abortion became widespread. Obviously this is true because 1,500,000 children every year from then pro abortion households were never born, but rather aborted. This is possibly part of the reason why abortion has remained legal in so few nations. Each succeeding generation contains relatively fewer children from the homes where abortion is favored. Politically, pro abortion is suicide. Pro abortionists might hope that the pro abortion media will convert

enough to make up the difference. The media does convert the luke warm anti abortionist. This is part of the reason why we are in Operation Rescue. If we are Christians, we must condemn abortion because the entire Christian Church before 1930 condemned abortion.

Christianity has had numerous splits. Advocates of both sides have contested bitterly and done numerous things history should condemn, but never disagreed on the abortion issue. Never until this generation. If Christianity is nothing more than a species of fairy tale, this does not matter. If, as we believe, it was founded by God, it could not have been wrong for 1900 years and those claiming to be Christians and favoring abortion will be punished at their judgment. As for us, this gives us a duty, even to undergo a miniature

martyrdom at the hands of ACLU attorneys and pro abortion judges and police. Our martyrdom in Los Angeles in March was the high point of our lives. We were beaten and injured, but surrounded by joy of an intensity we never before knew. We had the typical aggravations in jail, but had never before been so happy. The grace of God was overwhelmingly present. We were Christians and the Lord was there among us in a way and with an intensity we never before expected to experience. Protestant ministers and laymen were one in the Lord and in their Christianity with Catholic priests and laymen with an intensity that must have pleased the Lord. You would be amazed at the way the other prisoners treated us. This is why we pity all, including you who will be called to account for your deeds as well as for what you should have done and did

not do. This is why the rescue movement will grow in spite of unjust judges and all the punishments. We know we will be convicted of trespass or worse. We know we will have to endure what looks like punishment until abortion is outlawed, but we will continue to act on our belief that it really is a baby and will continue to give witness to our belief.

JANE HODGSON, MD, ET AL. Petitioners,
v.
THE STATE OF MINNESOTA, ET AL. Respondents,

Affidavit of mailing of amicus brief
copies, Rule 28.2
State of California } ss.
City of Santa Ana, County of Orange }

Robert L Sassone, being first duly sworn
on his oath deposes and says:

Robert L Sassone is a member of the bar of the United States Supreme Court admitted October 26, 1971. To his knowledge, on October 11, 1989, within the particular time and permitted time for serving of said amicus brief pursuant to Rule 28.2, he deposited in the United States Mailbox at Santa Ana, CA 92701 pursuant to Rule 28.2 with first class postage prepaid 40 copies of the attached amicus brief in the present case properly addressed to the Clerk of the United States Supreme Court and three copies of said amicus brief to each party addressed as follows:

CONCLUSION

God gives you only a limited number of votes and a limited amount of time on this great Court. We pray that you will not vote this time in a way you will regret in a few years when your few days are completed and you must answer. Until you change, we will give witness with our fortunes which will disappear and our imprisoned and injured bodies.

Respectfully submitted,

ROBERT L SASSONE, Attorney for Amici

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Subscribed and sworn to before me on
October 11, 1989.

Lawrence D. Sassone, Notary Public